

The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PAUL O'BEIRNE, an individual,

Plaintiff,

v.

TROY STAFFORD, an individual,

Defendant.

No. 2:15-cv-01330-RSL

PAUL O'BEIRNE'S MOTION FOR
DEFAULT JUDGMENT AGAINST
TROY STAFFORD

NOTE ON MOTION CALENDAR:
December 9, 2016

I. INTRODUCTION

Plaintiff Paul O'Beirne ("O'Beirne") moves for entry of default judgment against defendant Troy Stafford ("Stafford"). On October 20, 2016, the Court entered default against Stafford, *see* Order Directing Entry of Default (Dkt. No. 38); Order of Default (Dkt. No. 39), and directed O'Beirne to file this Motion for Default Judgment by November 19, 2016. *See* Order Directing Entry of Default at 2. As a result of Stafford's default, the allegations in O'Beirne's Complaint (Dkt. No. 1) are taken as true. All that remains is for the Court to award damages and other relief pursuant to Fed. R. Civ. P. 55(b)(2) and LCR 55(b).

For the reasons set forth below, the Court should enter default judgment against Stafford on O'Beirne's claim that Stafford breached a loan agreement by failing to repay

that loan and the interest accrued upon it. In that default judgment, the Court should award the damages O'Beirne has suffered as a result of Stafford's breach of the loan agreement.

II. STATEMENT OF FACTS

A. The O'Beirne-Stafford Loan

On or about June 14, 2010, O'Beirne and Stafford entered a written agreement under which O'Beirne lent Stafford \$350,000.00. Complaint ¶ 6; Declaration of Paul O'Beirne in Support of Motion for Default Judgment Against Troy Stafford ("O'Beirne Decl.") ¶ 2. Under that agreement, Stafford agreed to repay to O'Beirne the \$350,000.00 lent plus (a) 10,000 shares of Miller Petroleum, Inc., and (b) if at the time of repayment the value of Miller Petroleum was less than \$5.50 per share, \$100.00 for every cent Miller Petroleum was valued less than \$5.50 per share. Complaint ¶ 6; O'Beirne Decl. ¶ 3 & Ex. 1. In other words, Stafford agreed to repay to O'Beirne the principal amount of \$350,000.00 plus \$55,000.00 in cash or stock (or some combination thereof) for a total amount of \$405,000.00. Complaint ¶ 6; O'Beirne Decl. ¶ 3.

Under the agreement, Stafford was required to pay the \$350,000.00 in principal loaned to him and the \$55,000.00 in cash or stock (or some combination thereof) by September 21, 2010. Complaint ¶ 6; O'Beirne Decl. ¶ 3. Stafford failed timely to repay any of the principal or interest. Complaint ¶ 8; O'Beirne Decl. ¶ 4.

In October of 2010, O'Beirne and Stafford entered a subsequent agreement regarding O'Beirne's loan to Stafford. Complaint ¶ 9; O'Beirne Decl. ¶ 5. Under that subsequent agreement, Stafford was to pay an additional \$20,500.00 for every month the original loan remained unpaid after September 21, 2010. Complaint ¶ 9; O'Beirne Decl. ¶ 5 & Ex. 2.

The only payment Stafford has ever made to O'Beirne is a single \$10,000.00 payment in May of 2014. Complaint ¶ 9; O'Beirne Decl. ¶ 6. As of December 1, 2016, Stafford will owe O'Beirne \$1,932,500.00. O'Beirne Decl. ¶ 6 & Ex. 3.

B. Procedural History

Following Stafford's repeated promises to pay O'Beirne—and his inevitable breaking of those promises—O'Beirne filed his complaint against Stafford on August 19, 2015. Complaint (Dkt. No. 1). Stafford was served with the summons and complaint at his home in Irving, Texas, on August 26, 2015. Affidavit of Service (Dkt. No. 3). Stafford appeared by counsel on September 16, 2015. Notice of Appearance (Dkt. No. 5). Stafford answered O'Beirne's Complaint in January of 2016, *see* Answer and Affirmative Defenses (Dkt. No. 10), but his counsel moved to withdraw shortly thereafter, and the withdrawal was approved by this Court in mid-April. *See* Motion for Leave to Withdraw (Dkt. No. 14); Order Allowing Withdrawal (Dkt. No. 15).

Following Stafford's counsel's withdrawal, O'Beirne's counsel attempted to obtain discovery from Stafford. *See* Declaration of Jeremy Roller in Support of Plaintiff Paul O'Beirne's Motion to Compel (Dkt. No. 27). Those efforts were unsuccessful, and this Court ultimately granted O'Beirne's Motion to Compel. *See* Order Granting Plaintiff Paul O'Beirne's Motion to Compel (Dkt. No. 29). In that Order, the Court ordered Stafford to provide complete responses to O'Beirne's discovery requests and advised that Stafford's failure to answer that discovery or appear for deposition could subject Stafford to sanctions, including judgment against him. *Id.*

After Stafford failed to provide discovery as ordered by the Court and failed to appear for a properly noticed deposition, O'Beirne moved for sanctions and entry of default against Stafford. *See* Paul O'Beirne's Motion for Sanctions and Entry of Default (Dkt. No. 34). On October 20, 2016, this Court directed entry of default against Stafford and ordered O'Beirne to file a motion for default judgment within 30 days. *See* Order Directing Entry of Default (Dkt. No. 38).

III. ARGUMENT

A. The Allegations of the Complaint, Except Those Relating to the Amount of Damages, are Taken as True

As a result of Stafford's default, the factual allegations of the Complaint, except those relating to the amount of damages, are taken as true. *See TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987). Ordinarily, the default itself establishes a defendant's liability. *Id.* at 917.

B. The *Eitel* Factors Favor Entry of Default Judgment Against Stafford

The Ninth Circuit has enumerated the following factors that the Court should consider in determining whether to enter a default judgment:

(1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff's substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at stake in the action, (5) the possibility of a dispute concerning material facts, (6) whether the default was due to excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986). Application of these factors here shows that default judgment should be entered against Stafford.

Under the first *Eitel* factor, the Court must consider whether O'Beirne will be prejudiced if entry of a default judgment is denied. *See id.* O'Beirne would be severely prejudiced if the Court were to deny entry of default judgment, as he has no other way to recover the principal and interest Stafford agreed to repay him. *See Microsoft Corp. v. Lopez*, No. C08-1743-JCC, 2009 WL 959219, at *2 (W.D. Wash. Apr. 7, 2009) ("[Plaintiff] would suffer prejudice if the default judgment is not entered because [Plaintiff] would be without other recourse of recovery . . .").

In analyzing the second and third factors, the Court determines whether O'Beirne has "adequately pled its substantive claim . . . in [his] Complaint." *Microsoft*, 2009 WL 959219, at *3. "The elements of a breach of contract claim are: (1) the existence of a valid contract, (2) breach of that contract, and (3) damages resulting from the breach." *Karpenski*

1 *v. American General Life Companies, LLC*, 999 F. Supp. 2d 1235, 1250 (W.D. Wash.
2 2014). Here, O’Beirne has plainly pled all elements of a breach of contract claim:

3 (1) The loan agreement was a valid contract, including offer, acceptance and
4 consideration. *See* Complaint ¶¶ 6, 13.

5 (2) Stafford breached the contract by failing to repay the loan. *See* Complaint ¶¶
6 8, 14.

7 (3) O’Beirne was damaged by that breach. *See* Complaint ¶¶ 10-11, 16.

8 Accordingly, the allegations in the Complaint are sufficient to show that Stafford breached
9 the loan agreement with O’Beirne. *See also* O’Beirne Decl. ¶¶ 2-6. Indeed, in the brief
10 period that Stafford participated in this litigation, he admitted that he failed to repay the
11 loan. *See* Answer (Dkt. No. 10) ¶ 8.

12 The fourth *Eitel* factor addresses “the amount of money at stake in relation to the
13 seriousness of Defendant’s conduct.” *Microsoft*, 2009 WL 959219, at *3 (internal
14 quotations and citations omitted). This factor might disfavor default judgment if the
15 seriousness of the defendant’s conduct were slight, but the amount of money at stake was
16 significant. Here, however, Stafford appears willfully to have avoided his obligations to
17 O’Beirne. Indeed, Stafford’s conduct in this litigation constituted of little more than
18 obfuscation and delay, including failing to abide by his discovery obligations, breaking his
19 commitments to provide discovery, promising yet failing to retain counsel, threatening (and
20 apparently failing) to file for bankruptcy protection, failing to appear at times he requested
21 for telephone conferences, and failing to appear for his deposition. *See generally*
22 Declaration of Jeremy Roller in Support of Motion to Compel (Dkt. No. 27); Declaration of
23 Jeremy Roller in Support of Motion for Sanctions and for Entry of Default (Dkt. No. 35).

24 For the fifth *Eitel* factor, the Court assesses the possibility of a dispute concerning
25 material facts. *Eitel*, 782 F.2d at 1471-72. As noted above, because the Court has entered
26 Stafford’s default, all factual allegations are taken as true except those relating to damages.

1 See *TeleVideo Sys.*, 826 F.2d at 917-18. Here, Stafford has admitted that he failed to repay
2 the loan. See Answer (Dkt. No. 10) ¶ 8. And Stafford's repeated failures to engage in
3 discovery have prevented O'Beirne from determining what, if anything, Stafford believes
4 should prevent O'Beirne from obtaining the relief he seeks in this action. Accordingly, this
5 factor weighs in favor of default judgment. See *Microsoft*, 2009 WL 959219, at *3
6 ("Defendant's silence supports the Court's finding that it is unlikely that genuine issues
7 exist as to any material facts.").

8 The sixth factor—whether the default was due to excusable neglect—plainly favors
9 entry of default judgment. Stafford was validly served with the summons and complaint.
10 See Affidavit of Service (Dkt. No. 3). Stafford even answered the Complaint. See Answer
11 (Dkt. No. 10). But Stafford apparently decided that O'Beirne's case against him was so
12 strong that his best course was to stick his head in the sand and ignore it. Indeed, Stafford
13 went one step further—repeatedly committing to act, yet failing to do so. See Roller
14 Declarations (Dkt. Nos. 27, 32). There simply is no evidence that Stafford's default is due
15 to excusable neglect. Accordingly, the sixth *Eitel* factor favors default judgment.

16 The final *Eitel* factor looks to whether, in light of the policy favoring decisions on
17 the merits, entry of default judgment is nonetheless appropriate. See *Microsoft*, 2009 WL
18 959219, at *3. That policy does not bar entry of default judgment, particularly where (as
19 here) the remaining factors favor default judgment. Courts have recognized that "the mere
20 existence of Fed. R. Civ. P. 55(b) indicates that this *Eitel* factor is not alone dispositive."
21 *Id.* (internal quotations and citations omitted). In this case, Stafford has been given every
22 opportunity to appear and contest the complaint on the merits, but has elected to ignore his
23 obligations and instead default. See Order Granting Motion to Compel (Dkt. No. 29); Order
24 Directing Entry of Default (Dkt. No. 38). Although disposition of claims on their merits is
25 encouraged, entry of default judgment is committed to the discretion of the trial court.
26



1 *Microsoft*, 2009 WL 959219, at *2 (citing *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir.
2 1980)).

3 As set forth above, all of the other *Eitel* factors favor entry of default judgment.
4 Such judgment should be entered here.

5 **C. O’Beirne is Entitled to Damages from Stafford’s Breach of Contract**

6 When the amount of damages alleged is not for a sum certain, the Court determines
7 damages pursuant to Fed. R. Civ. P. 55(b)(2). *Geddes v. United Fin. Group*, 559 F.2d 557,
8 560 (9th Cir. 1977). As described above, and as admitted in Stafford’s answer, it is
9 undisputed that Stafford failed to pay O’Beirne the \$405,000.00 to which he was entitled on
10 September 21, 2010. The only question for the Court is to determine whether (a) to enforce
11 the re-negotiated contract to which O’Beirne and Stafford agreed after Stafford’s failure to
12 timely pay, and if not, whether (b) to apply prejudgment interest under Washington law
13 (12%), or (c) to apply prejudgment interest under Alaska law (4%).

14 **1. The Court Should Award O’Beirne \$1,932,500.00**

15 As described above and as set forth in the Complaint and the O’Beirne Declaration,
16 following Stafford’s failure to pay the \$405,000.00 due on September 21, 2010, O’Beirne
17 and Stafford negotiated a renewed agreement for the terms under which Stafford would
18 repay O’Beirne. In short, the parties agreed that Stafford would pay an additional
19 \$20,500.00 for every month after September 21, 2010, that the loan was not repaid.
20 Complaint ¶ 9; O’Beirne Decl. ¶ 5 & Ex. 2. Given Stafford’s default, the allegation that
21 O’Beirne and Stafford renegotiated the loan—and that the newly negotiated agreement is
22 enforceable—is now taken as true. *TeleVideo Systems*, 826 F.2d at 917-18; *Pendleton*
23 *Flour Mills, LLC v. Garlic Jim’s Famous Gourmet Pizza*, No. C13-1987RAJ, 2014 WL
24 30338, at *1 (W.D. Wash. Jan. 3, 2014). And O’Beirne has submitted testimony regarding
25 the amount of damages to which he is entitled due to Stafford’s breach of that renegotiated
26

1 agreement, specifically \$1,932,500.00 as of December 1, 2016. *See* O’Beirne Decl. ¶ 5 &
 2 Ex. 2.

3 O’Beirne acknowledges, as he must, that the original loan agreement provides,
 4 under a heading entitled “Waiver and Amendments,” that “[n]o Amendment, modification,
 5 or waiver of, or consent with respect to, any provision of this Agreement or the Note shall
 6 be effective unless it shall be in writing and signed and delivered by the parties.” O’Beirne
 7 Decl. Ex. 1 ¶ 4(a). However, that provision should not bar O’Beirne’s recovery of the
 8 renegotiated amount for three reasons.

9 First, Stafford’s default precludes him from challenging O’Beirne’s allegation that
 10 this renegotiation was valid. *TeleVideo Systems*, 826 F.2d at 917-18. Although the validity
 11 of the renegotiation affects the amount of damages to which O’Beirne is entitled, now that
 12 Stafford has defaulted the effectiveness of the renegotiated terms is established. Stafford
 13 had the opportunity—indeed multiple opportunities—to appear and defend this case and,
 14 should he believe the renegotiation was invalid, argue accordingly. He did not do so.¹

15 Next, uncontroverted evidence shows that Stafford and O’Beirne agreed upon these
 16 terms. O’Beirne proposed additional monthly interest in the amount of \$20,500. O’Beirne
 17 Decl. ¶ 5 & Ex. 2. One week later, Stafford wrote back to O’Beirne, purporting to attach an
 18 addendum to the agreement, writing “I believe it [the addendum] meets all requirements”
 19 *i.e.*, the \$20,500 additional monthly interest. *Id.* This writing shows that the parties agreed
 20 upon the new terms, and it would be unjust for the lack of a signature to preclude this
 21 recovery.

22
 23
 24
 25 ¹ Because Stafford has failed to participate in this litigation, O’Beirne and this Court have no idea whether he
 26 would challenge the effectiveness of the renegotiation. It is possible, however, that Stafford would not
 challenge its effectiveness, as the implied rate of return in the original agreement was 84%. *See* O’Beirne
 Decl. ¶ 7. Had that interest rate applied following Stafford’s failure to repay, he would currently owe over
 \$10 million. *Id.* ¶ 7 & Ex. 4.

1 Third and finally, Stafford waived the requirement that an amendment be signed.
 2 *Cf. Sherman v. Lunsford*, 44 Wn. App. 858, 862 & n.3 (1986) (waiver of integration
 3 clause).

4 For all of these reasons, the Court should award O'Beirne \$1,932,500.00.

5 **2. If the Court Declines to Award O'Beirne Damages Based upon the**
 6 **Renegotiated Agreement, the Court Should Award \$405,000.00 plus**
 7 **Prejudgment Interest Under Washington Law**

8 If the Court disagrees with the analysis set forth in Section III.C.1, *supra*, the Court
 9 should award O'Beirne the amount due on September 21, 2010 (the date of the breach) plus
 10 prejudgment interest at a rate of 12%.

11 "In diversity actions brought in federal court a prevailing plaintiff is entitled to pre-
 12 judgment interest at state law rates." *MKB Constructors v. American Zurich Ins. Co.*, 83 F.
 13 Supp. 3d 1078, 1081 (W.D. Wash. 2015) (quoting and citing *Onink v. Cardelucci*, 285 F.3d
 14 1231, 1235 (9th Cir. 2002); *Northrop Corp. v. Triad Int'l Mktg., S.A.*, 842 F.2d 1154, 1155
 15 (9th Cir. 1988)). Under Washington law, prejudgment interest is available where the
 16 amount claimed is "liquidated." *Car Wash Enters., Inc. v. Kampanos*, 74 Wn. App. 537,
 17 548 (1994). "A 'liquidated' claim is one 'where the evidence furnishes data which, if
 18 believed, makes it possible to compute the amount with exactness, without reliance on
 19 opinion or discretion.'" *Id.* (quoting *King Cy. v. Puget Sound Power & Light Co.*, 70 Wn.
 20 App. 58, 61 (1993)). Further, prejudgment interest is allowable under Washington law
 21 "when the amount of an 'unliquidated' claim is for an amount due upon a specific contract
 22 for payment of money and the amount due is determinable by computation with reference
 23 to a fixed standard contained in the contract, without reliance on opinion or discretion."
 24 *Jaco Environmental, Inc. v. Am. Int'l Specialty Lines Ins. Co.*, No. 2:09-cv-0145 JLR, 2009
 25 WL 1591340, at *8 (W.D. Wash. May 19, 2009) (citing *Prier v. Refrigeration Eng'g Co.*,
 26 72 Wn. 2d 25 (1968)).

1 If this Court does not enforce the contractual modification described above, it is
 2 plain that O'Beirne's claim was for the liquidated or calculable amount of \$405,000.00 as
 3 of September 21, 2010, the date that Stafford was obligated to repay to O'Beirne the
 4 \$350,000.00 in principal plus cash or stock (or some combination thereof) in the amount of
 5 \$55,000.00. "Prejudgment interest runs from the date the claim arose until judgment is
 6 entered." *USA Gateway Travel, Inc. v. GEL Travel, Inc.*, No. C06-053JLR, 2006 WL
 7 3761359, at *5 (W.D. Wash. Dec. 20, 2006) (citing *Hansen v. Rothaus*, 730 P.2d 662, 665
 8 (Wash. 1986)).

9 Under Washington law, prejudgment interest on a breach of contract claim accrues
 10 at an annual rate of 12%. *See* RCW 4.56.110; RCW 19.52.020(1); *see also Reynold Metals*
 11 *Co. v. Alcan Inc.*, No. C04-0175RJB, 2006 WL 1806186, at *2 (W.D. Wash. June 29,
 12 2006). Applying a 12% annual rate (compounded monthly), O'Beirne should be awarded
 13 \$834,491 in damages. *See* O'Beirne Decl. ¶ 5 & Ex. 5.

14 O'Beirne acknowledges, as he must, that the loan agreement provides that it "shall
 15 be governed by the laws of the State of Alaska. Venue for any actions arising out of this
 16 Agreement shall be in Anchorage, Alaska." O'Beirne Decl. Ex. 1 ¶ 4(f). However, this
 17 Court should disregard that provision, as Stafford waived it. *See* Answer (Dkt. No. 5)
 18 (admitting that venue is proper in the Western District of Washington).

19 **3. If the Court Declines to Award O'Beirne Damages Based upon the**
 20 **Renegotiated Agreement or \$405,000.00 plus Prejudgment Interest**
 21 **Under Washington Law, the Court Should Award \$405,000.00 plus**
 22 **Prejudgment Interest Under Alaska Law**

23 If the Court disagrees with the analysis set forth in Sections III.C.1 and III.C.2,
 24 *supra*, the Court should award O'Beirne the amount due on September 21, 2010 (the date of
 25 the breach) plus prejudgment interest at the rate set by Alaska law, which is currently 4%.

26 Alaska law provides:

[T]he rate of interest on judgments and decrees for the payment of money,
 including prejudgment interest, is three percentage points above the 12th

Federal Reserve District discount rate in effect on January 2 of the year in which the judgment or decree is entered, except that a judgment or decree founded on a contract in writing, providing for the payment of interest until paid at a specified rate not exceeding the legal rate of interest for that type of contract, bears interest at the rate specified in the contract if the interest rate is set out in the judgment or decree.

Alaska Stat. § 09.30.070(a).

As of January 2, 2016, the discount rate in the 12th Federal Reserve District was 1%. O'Beirne Decl. ¶ 9. Accordingly, the prejudgment interest rate under Alaska law currently is 4%.

Applying a 4% annual rate (compounded monthly), O'Beirne should be awarded \$507,485 in damages. *See* O'Beirne Decl. ¶ 6 & Ex. 6.

IV. CONCLUSION

For the foregoing reasons, O'Beirne seeks entry of judgment against Stafford in one of the three amounts set forth above, as determined by this Court. A proposed order is submitted herewith.

DATED: November 18, 2016

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By: /s/ Jeremy E. Roller

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CERTIFICATE OF SERVICE

I hereby certify that on this date, I placed in the U.S. Mail, postage prepaid, a copy of the foregoing document addressed to the following:

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I also emailed the foregoing document to the following email addresses:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED: November 18, 2016 at Seattle, Washington.

/s/ Sue Stephens
Sue Stephens, Legal Assistant